No. 07-413

In The

Supreme Court of the United States

DEMETRIS CRAWFORD,

Petitioner,

vs.

GREAT AMERICAN CASH ADVANCE, INC.,

Respondent.

On Petition For A Writ of Certiorari To The Court Of Appeals Of Georgia

RESPONDENT'S BRIEF IN OPPOSITION

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RESTATEMENT OF QUESTION PRESENTED

Whether the instant petition meets applicable standards to support a grant of certiorari by this Court.

CORPORATE DISCLOSURE

Pursuant to Supreme Court Rule 29.6, Respondent states that Great American Cash Advance, Inc. is a privately held South Carolina corporation. None of its shares is held by a publicly traded company. Respondent does not agree that Petitioner has in any manner been properly certified as a representative of any class.

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S.C. Code §§34-39-110 *et seq.* 1

RESPONDENT'S STATEMENT OF THE CASE

Petitioner entered into two (2) loan transactions of three hundred dollars ($300.00) each with Respondent. Respondent is a South Carolina corporation with its offices located in North Augusta, South Carolina. The transactions were consummated at Respondent's office in that city. Petitioner is a resident of Georgia, who traveled to Respondent's office to make the loans. Hence these transactions are in fact directly in interstate commerce.

Respondent is duly licensed as a lender pursuant to the South Carolina Deferred Presentment Act (S.C. Code §§34-39-110 *et seq.*) and is regulated under that statute by the South Carolina Board of Financial Institutions. There is no issue in the case that the loan transactions involved comply with and are enforceable under the laws of the State of South Carolina.

Respondent filed suit against Petitioner in the Magistrate Court of Richmond County, Georgia ("the Magistrate Court"), seeking to recover on the loan. The Magistrate Court ruled adversely to Respondent on all issues and a *de novo* appeal was taken to the Superior Court of Richmond County, Georgia (the "Superior Court"). The Superior Court entered a series of orders, but only two (2) are pertinent to this proceeding. These are attached as appendices.

The first ruling found only that Respondent's South Carolina contract was not enforceable in the courts of Georgia because of a conflict with Georgia's Pay Day Loan statute. The second ruling granted

Respondent's Motion to Compel Arbitration. In doing so, the Superior Court stated that the claims of Petitioner were subject to arbitration "pursuant to the parties' agreement and the provisions of the Federal Arbitration Act." The order also recites that Petitioner had conceded the merits of the motion under applicable law.[1]

Petitioner appealed from this ruling to the Georgia Court of Appeals (the "Court of Appeals"), which affirmed. The Georgia Supreme Court (the "Supreme Court") denied certiorari and this petition followed.

REASONS FOR DENYING THE WRIT

I. INTRODUCTION

The standards for a grant of petition for certiorari by this Court are clearly set forth in its Rule 10. Those standards are as follows:

(a) A conflict between the United States Circuit Courts of Appeal;

(b) The state court of last resort has decided an important federal question in a way that conflicts with the decision of another

[1] Petitioner has neglected to call the Court's attention to these facts relating to the transactions, though they are set forth in her Appendix – the Georgia Court of Appeals Opinion. Nor has Petitioner properly characterized the Superior Court's ruling as to the validity and enforceability of the loans at issue.

state court of last resort or the United States Court of Appeals;

(c) A state court . . . has decided an important question of federal law that has not been but should be settled by this Court or has decided an important federal question in a way that conflicts with the relevant decisions of this Court.

This case does not involve either 10(a) or 10(b). Petitioner's case must thus rest entirely on Rule 10(c). Respondent believes that it is clear from the decision below and a brief review of applicable state and federal law that the petition does not pass muster under that provision.

II. ARGUMENT AND CITATION OF AUTHORITY

A. This Case Does Not Necessarily Implicate an Important Question of Federal Law.

Most of the Petitioner's challenges to the parties' arbitration agreement in the courts below relate to unconscionability. It was contended that the arbitration agreement was unconscionable because:

(1) it did not provide for mutuality of remedy;

(2) it required each party to be responsible for its own costs and expenses in presenting the dispute for arbitration;

(3) it provided for application of the American Arbitration Association (AAA) procedural rules; and

(4) arbitration allegedly would not allow her the "full panoply of relief available under law."

Finally, Petitioner urged that the Federal Arbitration Act ("FAA") (9 U.S.C. §1*ff*) should not be the controlling law to interpret and apply the parties' agreement.

Each of these challenges was rejected by the court below and each rejection was adequately supported by rules of state law.

Firstly, unconscionability, *vel non*, of an arbitration agreement is a matter for determination pursuant to state law.[2] 9 U.S.C. §2; *Results Oriented, Inc. v. Crawford*, 245 Ga.App. 432 (2000), *aff'd*, 273 Ga. 884 (2001); *Green Tree Financial Corp. v. Vintson*, 753 So.2d 497 (Ala. 1999). In rejecting Petitioner's first contention as to unconscionability, the court below relied upon its own decision in *Saturna v. Bickley Construction Co.*, 252 Ga.App. 140 (2001), also citing the Eleventh Circuit Court of Appeals decision in *Caley v. Gulfstream Aerospace Corporation*, 428 F.3d 1359, 1378 (2005). *Caley*, in turn, relied on Georgia law on this point.

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[2] Both parties argued, and the courts below applied, the Georgia law of arbitration agreements to the contract at issue here.

The second contention as to unconscionability was rejected in reliance on the Georgia Court of Appeals' own decisions in *Cash In Advance of Florida, Inc. v. Jolley*, 272 Ga.App. 282 (2005) and *Results Oriented, Inc. v. Crawford*, 245 Ga.App. 432 (2000), *aff'd*, 273 Ga. 884 (2001) and this Court's decision in *Green Tree Financial Corp. Alabama v. Randolph*, 531 U.S. 79 (2000).

These same authorities were relied upon by the Court of Appeals in rejecting the contention relating to AAA procedural rules and the fourth and fifth arguments relating to cost-prohibitiveness and availability of remedies. It is clear that all of the unconscionability issues were decided by application of state precedents and adherence to at least one decision of this Court.

Petitioner's final assertion is that the courts below erroneously applied the FAA to the parties' contracts. However, the Court of Appeals makes clear that, under state law, contractual provisions providing for the choice of the FAA as applicable law are enforceable under Georgia law independent of any preemption issues. Instead, the Court based its ruling on the body of state law favoring choice-of-law provisions in contracts, relying on its own decisions in *Results Oriented*, *supra*, and *Primerica Financial Services, Inc., et al. v. Wise, et al.*, 217 Ga.App. 36 (1995). Enforcement of the arbitration agreement under Georgia choice-of-law rules clearly raises no significant federal question for this Court's attention.

Further, Georgia's choice-of-law rule is utterly consonant with the decisions of this Court, which has recognized that preemption by the FAA does not operate without regard to the wishes of the contracting parties. *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52 (1995). Indeed, this Court has held, in *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford, Jr. University*, 489 U.S. 468 (1989) that a pro-arbitration policy is entirely consistent with assuring the enforceability of private agreements to arbitrate according to their terms. 489 U.S. at 476.

The second prong of Petitioner's argument on this point is apparently based on the argument that *Southland Corp. v. Keating*, 465 U.S. 1 (1984) was wrongly decided. However, this claim is without merit because the Court's holding as to preemption rests solidly on a foundation of state law. Prior to this Court's decision in *Keating*, Georgia had independently adopted as a matter of state law the preemption rule confirmed by *Keating* in the 1983 case of *Hilton Construction Co. v. Martin Mechanical Contractors, Inc.*, 251 Ga. 701 (1983). Georgia courts have consistently applied this rule in many cases, including *Results Oriented, supra*, relied upon by the Georgia court in this case.[3] While *Keating* may be the highest

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[3] *See also*:

DiMambro-Northend Associates v. Blanck-Alvarez, Inc., 251 Ga. 704, 707 (1983)

(Continued on following page)

and best authority from this Court on the issue, it is clear that Georgia had anticipated the *Keating* rule and has consistently applied it as a matter of state law for some twenty-three (23) years.

The decisions below are thus independently and adequately based on Georgia law and do not present a question which would afford this Court jurisdiction under the first test of Rule 10(c).

B. The State Court Did Not Decide Any Federal Question That Has Not Been Well Settled Nor Is There Any Conflict With This Court.

In its decision below, the Court of Appeals relied on this Court's decision in *Buckeye Check Cashing,*

Shearson/American Exp., Inc. v. Henson, 169 Ga.App. 950 (1984)

McCormick-Morgan, Inc. v. Whitehead Elec. Co., 179 Ga.App. 10, 12 (1986)

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Adage, Inc. v. Bank of America, N.A., 267 Ga.App. 877, 878 (2004)

Joyner v. Raymond James Financial Services, Inc., 268 Ga.App. 835, 837 (2004)

Inc. v. Cardegna, 546 U.S. 440 (2006) and its denial of certiorari in the companion case of *Jenkins v. First American Cash Advance of Georgia, LLC*, 400 F.3d 868 (11th Cir. 2005), treating its decision as controlling precedence for the specific issue involved: whether a challenge to the validity of the contract as a whole was for the arbitrator or for the court. There is thus controlling consistent precedent from this Court upon which the court below relied; no inconsistency exists.

As we have seen, the Georgia court relied upon an existing body of state law to enforce the choice of law provision of the contract electing to apply the FAA. Its doing so is consistent with *Keating* and other decisions of this Court establishing preemption by the FAA of any conflicting state statutes as well as those, previously noted, which underscore the importance of enforcing the parties' own agreement.

It thus follows directly that there can be no conflict as to any decision of the federal questions involved here that conflicts with the relevant decisions of this Court.[4]

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[4] Petitioner invites the Court to overrule the holding in *Keating* that the FAA is to be applied to state court proceedings. Petitioner relives upon comments of Justice Scalia in dissent in *Allied-Bruce Terminix Companies, Inc. v. Dobson*, 513 U.S. 265 (1995). Those comments are now twelve (12) years old. In the interim, the world has "turned over many times." Many court decisions have been made in reliance of the law as it exists with regard to state court enforceability of arbitration agreements,

(Continued on following page)

In addition, this Court has consistently reaffirmed the *Keating* decision on preemption. *See*, among others, *Perry, et al. v. Thomas*, 482 U.S. 483 (1987); *Doctors Associates, Inc. v. Casarotto*, 517 U.S. 681 (1996) (Justice O'Connor joining the majority); *Allied-Bruce Terminix Companies, Inc. v. Dobson*, *supra*. Indeed, this Court explicitly declined to overrule or modify *Keating* in *Allied-Bruce Terminix*.

Finally, as this Court noted in *Mitsubishi Motors v. Soler Chrysler-Plymouth*, 473 U.S. 614 (1985) arbitration under the Act is a matter of consent, not coercion, and parties are generally free to structure the arbitration agreements as they see fit.[5]

It is thus clear from this line of cases that the decision of the court below in no wise conflicts with relevant decisions of this Court.

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endless numbers of contracts have likely been written upon which the parties have relied, and litigation decided on the basis of those contracts.

[5] The parties to the transactions here engaged directly in interstate commerce – Petitioner traveled to South Carolina to transact business with Respondent. This aspect of their dealings establishes a crucial nexus between their agreement and the reasonable choice of Federal law.

CONCLUSION

Respondent has demonstrated that the Petition for Certiorari neither implicates important questions of Federal law nor involves a decision of the State Court as to a matter of Federal law that is unsettled. The decision sought for which a review is sought here does not conflict in any way with decisions of this Court. Rather, it specifically follows the precedents established by this Court, which are quite recent and comprehensive in dealing with the issues attempted to be presented here.

For these reasons, and those set forth in more detail above, the Petition should be denied.

Respectfully submitted,

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Dated: November 7, 2007.

APPENDIX A

SUPERIOR COURT OF RICHMOND COUNTY
STATE OF GEORGIA

GREAT AMERICAN CASH ADVANCE, INC., Plaintiff,	)	CIVIL ACTION FILE NO. 2006-RCCV-197
v.	)	
DEMETRIS CRAWFORD, Defendant.	)	

ORDER

Defendant's motion for summary judgment having come on for hearing, and both parties having presented argument by counsel, the Court finds as follows:

1. The Court finds that the contracts sued upon are unenforceable in this State, by virtue of O.C.G.A. §16-17-1 *et. seq.*
2. The Court believes that appellate review should be had of this issue and advises the parties that it will, on request of Plaintiff, grant a certificate of immediate review as provided by O.C.G.A. §5-6-34(b).

SO ORDERED this 19th day of September, 2006.

/s/ Duncan D. Wheale
JUDGE, SUPERIOR COURT OF
RICHMOND COUNTY

– signatures on next page –

Approved as to form only:

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CERTIFICATE OF SERVICE

This is to certify that I have served the within and foregoing Order by causing a copy of same to be sent by U.S. Mail with sufficient postage affixed, to:

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This 19th day of September, 2006.

/s/ Charles C. Stebbins, III
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APPENDIX B

SUPERIOR COURT OF RICHMOND COUNTY
STATE OF GEORGIA

DEMETRIS CRAWFORD, Plaintiff, v. GREAT AMERICAN CASH ADVANCE, INC., Defendant.	)	CIVIL ACTION FILE NO. 2006-RCCV-198

ORDER

This case is before the Court on the renewed motion of Great American Cash Advance, Inc. to compel arbitration of Crawford's claims. The motion came before the Court for a hearing on June 20, 2006. Both parties were represented by counsel, who presented arguments at the hearing. The Court has duly considered the motion and supporting materials and the representations and arguments and counsel and has determined that the motion is MERITORIOUS.

Accordingly, it is hereby ORDERED as follows:

1.

The motion is GRANTED and all issues relating to Crawford's claims shall be subject to arbitration pursuant to the parties' agreement and the provisions of the Federal Arbitration Act.

2.

While Crawford has conceded the merits of the motion under existing precedents from the United States and Georgia Appellate Courts, she has nonetheless preserved her rights to urge that, as an extension or modification of existing precedents, the arbitration agreement may be unenforceable as unconscionable or otherwise.

3.

The Court believes that appellate review should be had of this issue and advises the parties that it will, on request of Plaintiff but without expressing an opinion as to whether this order is otherwise directly appealable, grant a certificate for immediate review as provided by O.C.G.A.. §5-6-34(b).

SO ORDERED this 19th day of September, 2006.

/s/ Duncan D. Wheale
JUDGE, SUPERIOR COURT OF
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